IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Smt. Vimla.
vs.
Dhanna Ram & others.

S.B.CIVIL SECOND APPEAL NO.389/2004 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 29.7.2004 PASSED BY SHRI UMESH SHARMA, ADDITIONAL DISTRICT JUDGE NO.1, HANUMANGARH IN CIVIL APPEAL NO.17/2001 (15/2001)

DATE OF JUDGMENT ::: 9.5.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. RS Saran, for the appellant.
Mr. Dron Kaushik, for the respondents.

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BY THE COURT:

Heard learned counsel for the parties.

The appellant/defendant is aggrieved against the judgment and decree of the first appellate court dated 29.7.2004.

The plaintiff filed suit for injunction against the respondents alleging that the outlet in dispute was sanctioned but it was not in use since last 20 years still the defendant no.4 submitted an application before the Executive Engineer and obtained the order for reopening of said closed outlet. The plaintiff preferred appeal before the Superintendent Engineer, which was dismissed and it was ordered that the outlet be opened and police help was also ordered. Therefore, the plaintiff filed the suit for injunction against the defendants including appellant. The trial court dismissed the suit on 28.2.2001. The plaintiff preferred appeal which was allowed by the appellate court on 29.7.2004, therefore, the defendant has preferred this second appeal.

The trial court observed that the plaintiff in his statement stated that the outlet was never opened whereas the plaintiff's evidence was that the outlet is closed since last 20 years, therefore, the plaintiff has not come with clean hands. The trial court dismissed the suit vide judgment and decree dated 28.2.2001.

According to learned counsel for the appellant, the plaintiff failed to prove that the outlet was closed since last 20 years or for more than 3 years. In fact, the plaintiff's statement is that the outlet was never sanctioned and, therefore, the plaintiff's entire case is false. It is also submitted that the plaintiff did not produce any evidence to show that in fact, there was no

irrigation from the outlet and new facility is being sought by the defendants. It is also submitted that the evidence was produced by the defendant State which supported the appellant's case.

I have considered the submissions of learned counsel for the appellant and perused the reasons given by two courts below.

The trial court itself in its judgment clearly mentioned that the plaintiff's case is that though the outlet was sanctioned but the said outlet was not feasible and, therefore, no water supply was made available for the said outlet since last 20 years. The officers of the State Government were also party in the Suit and even they failed to produce any evidence to show that the irrigation facility was given in last so many years from the said outlet. Apart from it, it appears that the present appellant even did not submit written statement before the trial court, however, she appeared in the witness box and submitted that the plaintiff is not permitting the defendant to take water from the outlet and he used to close the outlet and, therefore, she sought the order from the concerned authority. In view of the above, the finding of fact recorded by the first appellate court that the outlet was closed since last more than three years and because of that reason, that outlet cannot be opened as per Rule 29(2), I do not find that the appellate court committed any illegality in dismissing the suit.

In view of the above, no substantial question of laws arise in this appeal. Accordingly, this appeal having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya